

HOUSE BILL No. 1939

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-10-10-11; IC 32-34; IC 34-11-2.

Synopsis: Unclaimed property. Provides civil damages for actions related to agreements to locate unclaimed property or warrants. Allows the attorney general to sell unclaimed property at a commercially reasonable public sale. Eliminates the attorney exemption for agreements to locate unclaimed property. Makes the time period for which unclaimed property related to child support is held the same as for other property. Allows the attorney general to establish rules for publication of notice and dates for filing reports. Makes certain other changes to the unclaimed property law.

Effective: July 1, 2003.

Fry, Grubb

January 23, 2003, read first time and referred to Committee on Appointments and Claims.

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First Regular Session 113th General Assembly (2003)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2002 Regular or Special Session of the General Assembly.

HOUSE BILL No. 1939

A BILL FOR AN ACT to amend the Indiana Code concerning property.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 4-10-10-11, AS AMENDED BY P.L.2-2002,
2 SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2003]: Sec. 11. (a) This section applies to a warrant drawn by
4 the auditor of state upon funds in custody of the treasurer of state or a
5 check authorized by law to be issued from funds in custody of any other
6 state agency, if the check or warrant is outstanding and unpaid, but is
7 not determined to be unclaimed property under IC 32-34-1.
8 (b) An agreement for which the primary purpose is to pay
9 compensation to locate, deliver, recover, or assist in the recovery of a
10 check or warrant described in subsection (a) is valid only if:
11 (1) the fee or compensation agreed upon is not more than ten
12 percent (10%) of the amount collected unless the amount
13 collected is fifty dollars (\$50) or less;
14 (2) the agreement is in writing;
15 (3) the agreement is signed by the apparent owner of the check or
16 warrant described in subsection (a); and
17 (4) the agreement clearly sets forth:



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(A) the nature and value of the property; and

(B) the value of the apparent owner's share after the fee or compensation has been deducted.

(c) This section does not prevent an owner from asserting at any time that an agreement to locate property is otherwise invalid.

(d) If a person who enters into an agreement to locate, deliver, recover, or assist in the recovery of a check or warrant described in subsection (a) violates this section, an owner who presents a valid claim or the attorney general on behalf of an owner who presents a valid claim may bring an action against the person for:

(1) damages equal to the value of the check or warrant;

(2) additional damages in an amount up to two (2) times the value of the check or warrant; and

(3) the other party's reasonable attorney's fees.

(e) An action brought under this section must commence not later than two (2) years after the date the agreement was entered.

SECTION 2. IC 32-34-1-1, AS ADDED BY P.L.2-2002, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 1. (a) This chapter does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction.

(b) This chapter does not apply to:

(1) stocks;

(2) dividends;

(3) capital credits;

(4) patronage refunds;

(5) utility deposits;

(6) membership fees;

(7) account balances; or

(8) book equities;

for which the owner cannot be found and that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural telephone cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-7-1.

(c) This chapter does not apply to unclaimed overpayments of utility bills that become the property of a municipality under IC 36-9-23-28.5.

(d) This chapter does not apply to deposits required by a municipally owned utility (as defined in IC 8-1-2-1).

(e) This chapter does not apply to a business to business credit memorandum or a credit balance resulting from a business to business credit memorandum.

(f) This chapter does not apply to gift certificates or gift cards.

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SECTION 3. IC 32-34-1-20, AS ADDED BY P.L.2-2002,
SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2003]: Sec. 20. (a) For purposes of this section, an indication
of interest in the property by the owner:

(1) does not include a communication with an owner by an agent
of the holder who has not identified in writing the property to the
owner; and

(2) includes the following:

(A) With respect to an account or underlying shares of stock
or other interest in a business association or financial
organization:

(i) the cashing of a dividend check or other instrument of
payment received; or

(ii) evidence that the distribution has been received if the
distribution was made by electronic or similar means.

(B) A deposit to or withdrawal from a bank account.

(C) The payment of a premium with respect to a property
interest in an insurance policy.

(D) The mailing of any correspondence in writing from a
financial institution to the owner, including:

(i) a statement;

(ii) a report of interest paid or credited; or

(iii) any other written advice;

relating to a demand, savings, or matured time deposit
account, including a deposit account that is automatically
renewable, or any other account or other property the owner
has with the financial institution if the correspondence is not
returned to the financial institution for nondelivery.

(E) Any activity by the owner that concerns:

(i) another demand, savings, or matured time deposit
account or other account that the owner has with a financial
institution, including any activity by the owner that results
in an increase or decrease in the amount of any other
account; or

(ii) any other relationship with the financial institution,
including the payment of any amounts due on a loan;

if the mailing address for the owner contained in the financial
institution's books and records is the same for both an inactive
account and for a related account.

(b) The application of an automatic premium loan provision or other
nonforfeiture provision contained in an insurance policy does not
prevent the policy from maturing or terminating if the insured has died

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or the insured or the beneficiary of the policy otherwise has become entitled to the proceeds before the depletion of the cash surrender value of the policy by the application of those provisions.

(c) Property that is held, issued, or owed in the ordinary course of a holder's business is presumed abandoned if the owner or apparent owner has not communicated in writing with the holder concerning the property or has not otherwise given an indication of interest in the property during the following times:

- (1) For traveler's checks, fifteen (15) years after issuance.
- (2) For money orders, seven (7) years after issuance.
- (3) For consumer credits, three (3) years after the credit becomes payable.
- ~~(4)~~ For gift certificates, three (3) years after December 31 of the year in which the gift certificate was sold. If the gift certificate is redeemable in merchandise only, the amount abandoned is considered to be sixty percent (60%) of the certificate's face value.
- ~~(5)~~ (4) For amounts owed by an insurer on a life or an endowment insurance policy or an annuity contract:
 - (A) if the policy or contract has matured or terminated, three (3) years after the obligation to pay arose; or
 - (B) if the policy or contract is payable upon proof of death, three (3) years after the insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve is based.
- ~~(6)~~ (5) For property distributable by a business association in a course of dissolution, one (1) year after the property becomes distributable.
- ~~(7)~~ (6) For property or proceeds held by a court or a court clerk, other than property or proceeds related to child support, five (5) years after the property or proceeds become distributable. The property or proceeds must be treated as unclaimed property under IC 32-34-3. For property or proceeds related to child support held by a court or a court clerk, ten (10) years after the property or proceeds become distributable.
- ~~(8)~~ (7) For property held by a state or other government, governmental subdivision or agency, or public corporation or other public authority, one (1) year after the property becomes distributable.
- ~~(9)~~ (8) For compensation for personal services, one (1) year after the compensation becomes payable.
- ~~(10)~~ (9) For deposits and refunds held for subscribers by utilities,



one (1) year after the deposits or refunds became payable.

~~(11)~~ **(10)** For stock or other interest in a business association, five (5) years after the earlier of:

(A) the date of the last dividend, stock split, or other distribution unclaimed by the apparent owner; or

(B) the date of the second mailing of a statement of account or other notification or communication that was:

(i) returned as undeliverable; or

(ii) made after the holder discontinued mailings to the apparent owner.

~~(12)~~ **(11)** For property in an individual retirement account or another account or plan that is qualified for tax deferral under the Internal Revenue Code, three (3) years after the earliest of:

(A) the actual date of the distribution or attempted distribution;

(B) the distribution date as stated in the plan or trust agreement governing the plan; or

(C) the date specified in the Internal Revenue Code by which distribution must begin in order to avoid a tax penalty.

~~(13)~~ **(12)** For a demand, savings, or matured time deposit, including a deposit that is automatically renewable, five (5) years after maturity or five (5) years after the date of the last indication by the owner of interest in the property, whichever is earlier. Property that is automatically renewable is considered matured for purposes of this section upon the expiration of its initial period, unless the owner has consented to a renewal at or about the time of the renewal and the consent is in writing or is evidenced by a memorandum or other record on file with the holder.

~~(14)~~ **(13)** For all other property, the earlier of five (5) years after:

(A) the owner's right to demand the property; or

(B) the obligation to pay or distribute the property; arose.

(d) Property is payable or distributed for purposes of this chapter notwithstanding the owner's failure to make demand or present an instrument or a document otherwise required to receive payment.

SECTION 4. IC 32-34-1-26, AS ADDED BY P.L.2-2002, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 26. (a) A holder of property that is presumed abandoned and that is subject to custody as unclaimed property under this chapter shall report in writing to the attorney general concerning the property. Items of value of less than fifty dollars (\$50) may be

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reported by the holder in the aggregate.

(b) For each item with a value of at least fifty dollars (\$50), the report required under subsection (a) must be verified and must include the following:

(1) ~~Except with respect to traveler's checks and money orders;~~

The apparent owner's:

(A) name, if known;

(B) last known address, if any; and

(C) Social Security number or taxpayer identification number, if readily ascertainable.

(2) In the case of the contents of a safe deposit box or other safekeeping depository of tangible property:

(A) a description of the property;

(B) the place where the property is held and may be inspected by the attorney general; and

(C) any amount that is owed to the holder.

(3) The date:

(A) the property became payable, demandable, or returnable; and

(B) of the last transaction with the apparent owner with respect to the property.

(4) Other information that the attorney general requires by rules adopted under IC 4-22-2 as necessary for the administration of this chapter.

(c) If:

(1) a holder of property that is presumed abandoned and that is subject to custody as unclaimed property is a successor to another person who previously held the property for the apparent owner; or

(2) the holder has changed its name while holding the property; the holder shall file with the report required by subsection (a) the former names of the holder, if any, and the known name and address of any previous holder of the property.

(d) ~~The report required by subsection (a) must be filed as follows:~~

(1) ~~The report of a life insurance company must be filed before May 1 of each year for the calendar year preceding the year in which the report is filed.~~

(2) ~~All other holders must file the report before November 1 of each year to cover the year preceding July 1 of the year in which the report is filed.~~

(d) The attorney general shall establish filing dates for the report required by subsection (a).

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(e) The holder of property that is presumed abandoned and that is subject to custody as unclaimed property under this chapter shall, not more than one hundred twenty (120) days or less than sixty (60) days before filing the report required by subsection (a), send written notice to the apparent owner of the property stating that the holder is in possession of property subject to this chapter if:

(1) the holder has a record of an address for the apparent owner that the holder's records do not show as inaccurate;

(2) the claim of the apparent owner is not barred by the statute of limitations; and

(3) the value of the property is at least fifty dollars (\$50).

(f) Before the date of filing the report required by subsection (a), the holder may request the attorney general to extend the time for filing the report. The attorney general may grant the extension upon a showing of good cause. The holder, upon receipt of the extension, may make an interim payment on the amount the holder estimates will ultimately be due. The making of an interim payment under this subsection suspends the accrual of interest on the amount.

(g) The holder shall file with the report an affidavit stating that the holder has complied with this section.

SECTION 5. IC 32-34-1-28, AS ADDED BY P.L.2-2002, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 28. (a) Except as provided in subsection (e), the attorney general shall publish a notice not later than November 30 of the year immediately following the year in which unclaimed property has been paid or delivered to the attorney general.

(b) Except as provided in subsection (c), the **attorney general shall publish** notice required by subsection (a) ~~must be published at least once each week for two (2) successive weeks in a newspaper of general circulation published through a medium determined by the attorney general~~ in the county in Indiana of the last known address of any person named in the notice.

(c) If the holder:

(1) does not report an address for the apparent owner; or

(2) reports an address outside Indiana;

the notice must be published in the county in which the holder has its principal place of business within Indiana or any other county that the attorney general may reasonably select.

(d) The advertised notice required by this section must be in a form that, in the judgment of the attorney general, will attract the attention of the apparent owner of the unclaimed property and must contain the following information:

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(1) The name of each person appearing to be an owner of property that is presumed abandoned, as set forth in the report filed by the holder.

(2) The last known address or location of each person appearing to be an owner of property that is presumed abandoned, if an address or a location is set forth in the report filed by the holder.

(3) A statement explaining that the property of the owner is presumed to be abandoned and has been taken into the protective custody of the attorney general.

(4) A statement that information about the abandoned property and its return to the owner is available, upon request, from the attorney general, to a person having a legal or beneficial interest in the property.

(e) The attorney general is not required to publish the following in the notice:

(1) Any item with a value of less than ~~fifty~~ **one hundred** dollars ~~(\$50)~~ **(\$100)**.

(2) Information concerning a traveler's check, money order, or any similar instrument.

SECTION 6. IC 32-34-1-31, AS ADDED BY P.L.2-2002, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 31. (a) Except as provided in subsections (b) and (c), the attorney general, not later than three (3) years after the receipt of abandoned property, shall sell the property to the highest bidder at a **commercially reasonable** public sale ~~in a city in Indiana~~ that, in the judgment of the attorney general, affords the most favorable market for the property. The attorney general may decline the highest bid and reoffer the property for sale if, in the judgment of the attorney general, the bid is insufficient. If, in the judgment of the attorney general, the probable cost of the sale exceeds the value of the property, the attorney general is not required to offer the property for sale. A sale held under this section must be preceded, at least three (3) weeks before the sale, by one (1) publication of notice ~~in a newspaper of general circulation published~~ in the county in which the property is to be sold. **The attorney general shall determine the medium for publishing the notice.**

(b) If the property is of a type that is customarily sold on a recognized market or that is subject to widely distributed standard price quotations, and if, in the opinion of the attorney general, the probable cost of a public sale to the highest bidder would:

(1) exceed the value of the property; or

(2) result in a net loss;



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the attorney general may sell the property privately, without notice by publication, at or above the prevailing price for the property at the time of the sale.

(c) Securities shall be sold as soon as reasonably possible following receipt. If a valid claim is made for any securities in the possession of the attorney general, the attorney general may:

(1) transfer the securities to the claimant; or

(2) pay the claimant the value of the securities as of the date the securities were delivered to the attorney general.

Notice of the sale of securities is not required. Securities listed on an established stock exchange must be sold at prices prevailing at the time of the sale on the stock exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the attorney general considers reasonable.

(d) A purchaser of property at a sale conducted by the attorney general under this chapter takes the property free of all claims of the owner or previous holder and of all persons claiming through or under them. The attorney general shall execute all documents necessary to complete the transfer of ownership.

(e) A person does not have a claim against the attorney general for any appreciation of property after the property is delivered to the attorney general, except in a case of intentional misconduct or malfeasance by the attorney general.

SECTION 7. IC 32-34-1-36, AS ADDED BY P.L.2-2002, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 36. (a) A person, except another state, claiming an interest in property paid or delivered to the attorney general may file a claim on a form prescribed by the attorney general and verified by the claimant. **To be considered by the attorney general, the claim must meet the requirements established by the attorney general.**

(b) Not later than ninety (90) days after a claim **that meets the requirements established by the attorney general** is filed under subsection (a), the attorney general shall:

(1) consider the claim; and

(2) give written notice to the claimant that the claim is granted or that the claim is denied in whole or in part.

(c) Not later than thirty (30) days after a claim is ~~allowed~~ **granted**, the attorney general shall pay over or deliver to the claimant the property, or the net proceeds of the sale of property if the property has been sold by the attorney general, together with any additional amount to which the claimant may be entitled under section 30 of this chapter.

(d) A holder who pays the owner for property that has been

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delivered to the state and that, if claimed from the attorney general by the owner, would be subject to an increment under section 30 of this chapter shall recover the amount of the increment from the attorney general.

(e) A person may file a claim under subsection (a) at any time within twenty-five (25) years after the date on which the property was first presumed abandoned under this chapter, notwithstanding the expiration of any other time specified by statute, contract, or court order during which an action or a proceeding may be commenced or enforced to obtain payment of a claim for money or recovery of property.

SECTION 8. IC 32-34-1-36.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 36.5. (a) An owner of property that is delivered to the attorney general may disclaim the property by filing a disclaimer of property with the attorney general in the form and manner required by the attorney general.**

(b) If the property is disclaimed under subsection (a), the attorney general may immediately:

(1) sell the property and transmit the proceeds; or

(2) transfer the property;

to the common school fund.

SECTION 9. IC 32-34-1-46, AS ADDED BY P.L.2-2002, SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 46. (a) This subsection does not apply to an owner's agreement with an attorney to file a claim as to identified property or to contest the attorney general's denial of a claim. An agreement by an owner that:**

(1) has the primary purpose of paying compensation to locate, deliver, recover, or assist in the recovery of property presumed abandoned under this chapter; and

(2) is entered into not earlier than the date the property was presumed abandoned and not later than twenty-four (24) months after the date the property is paid or delivered to the attorney general;

is void and unenforceable.

(b) An agreement by an owner that has the primary purpose of locating, delivering, recovering, or assisting in the recovery of property is valid only if:

(1) the fee or compensation agreed upon is not more than ten percent (10%) of the amount collected, unless the amount collected is fifty dollars (\$50) or less;



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- (2) the agreement is in writing;
- (3) the agreement is signed by the apparent owner;
- (4) the agreement clearly sets forth:
 - (A) the nature and value of the property; and
 - (B) the value of the apparent owner's share after the fee or compensation has been deducted; and
- (5) the agreement contains the provision set forth in subsection (d).

(c) This section does not prevent an owner from asserting at any time that an agreement to locate property is otherwise invalid.

(d) This subsection applies to a person who locates, delivers, recovers, or assists in the recovery of property reported under this chapter for a fee or compensation. An advertisement, a written communication, or an agreement concerning the location, delivery, recovery, or assistance in the recovery of property reported under this chapter must contain a provision stating that, by law, any contract provision requiring the payment of a fee for finding property held by the attorney general for less than twenty-four (24) months is void, and that fees are limited to not more than ten percent (10%) of the amount collected unless the amount collected is fifty dollars (\$50) or less.

~~(e) Subsections (b)(4) and (d) do not apply to attorney's fees.~~

~~(f)~~ If an agreement covered by this section:

- (1) applies to mineral proceeds; and
- (2) contains a provision to pay compensation that includes a portion of the underlying minerals or any mineral proceeds not then presumed abandoned;

the provision is void and unenforceable.

~~(g)~~ **(f)** An agreement covered by this section that provides for compensation that is unconscionable is unenforceable except by the owner. An owner who has agreed to pay compensation that is unconscionable, or the attorney general on behalf of the owner, may maintain an action to reduce the compensation to a conscionable amount. The court may award reasonable attorney's fees to an owner who prevails in the action.

SECTION 10. IC 32-34-1-46.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2003]: **Sec. 46.5. (a) This section applies to a person who agrees to locate, deliver, recover, or assist in the recovery of unclaimed property under an agreement described in section 46 of this chapter.**

(b) If a person violates section 46 of this chapter, a claimant, or the attorney general on behalf of a claimant, may bring an action

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1 against the person for:

2 (1) damages equal to the value of the property recovered,
3 based upon one hundred percent (100%) of the value of the
4 property on the date of the fee agreement;

5 (2) additional damages in an amount up to two (2) times the
6 value of the property; and

7 (3) the other party's reasonable attorney's fees.

8 (c) An action brought under this section must commence not
9 later than two (2) years after the date the agreement was entered.

10 SECTION 11. IC 32-34-2-0.5 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2003]: **Sec. 0.5. This chapter does not apply**
13 **to property or an unclaimed article left in a safe deposit box.**

14 SECTION 12. IC 34-11-2-13 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2003]: **Sec. 13. An action under**
17 **IC 4-10-10-11 must be commenced within the period set forth in**
18 **IC 4-10-10-11(e).**

19 SECTION 13. IC 34-11-2-14 IS ADDED TO THE INDIANA
20 CODE AS A NEW SECTION TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2003]: **Sec. 14. An action under**
22 **IC 32-34-1-46.5 must be commenced within the period set forth in**
23 **IC 32-34-1-46.5(c).**

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